

COMPLIANCE AUDIT REPORT

STATE OF MAINE
WORKERS' COMPENSATION BOARD



WAUSAU INSURANCE
JUNE 9, 2003

Monitoring, Audit & Enforcement (MAE) Division

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SUMMARY

The Audit Division of the Maine Workers' Compensation Board examined 36 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Wausau Insurance Company is an insurance company that administers workers' compensation coverage for its insured. All Maine claims were administered at their 34 Crosby Road, Bedford, Massachusetts location.

Wausau Insurance Company sent to the WCB, on January 07, 2003, the claims listing which contained 366 claims for the year 2001. Thirty-six claims were chosen for the audit sample per the Audit Sample Section.

Maine WCB Audit Division's on-site audit of Wausau Insurance Company began on March 24, 2003 and ended on March 27, 2003. The compliance tables found on pages 8 through 10 of this report are representative of our finding as of March 24, 2003. The Audit Division requested missing form filings and form corrections on March 27, 2003. There are some outstanding issues that have warranted further investigation by Wausua Insurance Company. Following is a discussion of the aforementioned compliance tables.

Of the claims files audited, there were 17 "lost time" claims, 18 "medical only" claims and 1 "incident only"¹ claims.

Our audit revealed:

- Form filing:
 - The 17 "lost time" claims sort out as follows:
 - Nine claims were compensated lost time claims.
 - Three compensated claims' Employer's First Report of Occupational Injury or Disease were filed timely, which is in compliance with Title 39-A, M.R.S.A, Section 303.
 - Six compensated lost time claims' Employer's First Report of Occupational Injury or Disease were not filed timely, which is not in compliance with Title 39-A, M.R.S.A, Section 303.
 - Eight claims were non-compensated lost time claims.
 - Two non-compensated lost time claims' Employer's First Report of Occupational Injury or Disease were filed timely, which is in compliance with Title 39-A, M.R.S.A, Section 303.

- Two non-compensated lost time claims' Employer's First Report of Occupational Injury or Disease were not filed timely, which is not in compliance with Title 39-A, M.R.S.A, Section 303.
- Four non-compensated lost time claims' Employer's First Report of Occupational Injury or Disease were not filed, which is not in compliance with Title 39-A, M.R.S.A, Section 303.

Title 39-A, M.R.S.A Section 303 provides the requirements for reports to the Board.

- It appears that the WCB-1 filings were 29 percent compliant. The non-compliant rates were 47 percent for the WCB-1 forms that were filed late and 24 percent for the WCB-1 forms that were not filed. As of April 3, 2003 these forms have been filed at the WCB. See "Form Filing".
- The Wage Statement and Schedule of Dependent(s) and Filing Status Statement compliance rates appear to be 30 and 30 percent respectively. The non-compliant rates were 60 percent for forms that were filed late and 10 percent for the forms that were not filed. As of April 3, 2003 these forms have been filed at the WCB. See "Form Filing".
- The Memorandum of Payment (WCB-3) compliance rate appears to be 34 percent. The non-compliant rates were 55 percent for the WCB-3 forms that were filed late and 11 percent for the WCB-3 forms that were not filed. As of April 3, 2003 these forms have been filed at the WCB. This compliance rate does not meet the WCB performance benchmark, which is at 75 percent. See "Form Filing".
- The Discontinuance or Modification of Compensation (WCB-4) compliance rate appears to be 100 percent. See "Form Filing".
- The Discontinuance of Reduction of Compensation (WCB-8) compliance rate appears to be 50 percent. As of April 3, 2003 these forms have been filed at the WCB. See "Form Filing".
- The Statement of Compensation Paid compliance rate appears to be zero percent. The non-compliant rates were 75 percent for the WCB-11 forms that were filed late and 25 percent for the WCB-11 forms that were not filed. See "Form Filing".

➤ Timeliness of the nine compensated claims:

- Three claimants were paid the initial indemnity benefits timely, which is in compliance with Title 39-A, M.R.S.A. Section 205.
- Six claimants were not paid the initial indemnity benefits timely, which is not in compliance with Title 39-A, M.R.S.A. Section 205.
 - One claimant's benefit payment was made on the 21st day.
 - One claimant's benefit payment was made on the 24th day.
 - One claimant's benefit payment was made on the 43rd day.

- One claimant's benefit payment was made on the 53rd day and is subject to the provisions of §205(3).
- One claimant's benefit payment was made on the 177th day and is subject to the provisions of §205(3).
- One claimant's benefit payment was made on the 530th day and is subject to the provisions of §205(3).
- The initial indemnity payment benefit compliance rate is at 34 percent. This compliance rate does not meet the WCB performance benchmark, which is at 80 percent. See "Indemnity Benefits".
- The subsequent indemnity payments that were paid 8-14 days and 15+ days after previous payment occurred because the insurer paid the claimant some weeks in advance of the date due.
- It appears that one claimant was not discontinued timely and indemnity is still owed, which is subject to provisions of §205(3). It is unclear, at this time, of the actual value of the compensation.
- The subsequent payment of benefits compliance rate is at 80 percent. See "Indemnity Benefits".

Title 39-A, M.R.S.A. Section 205 (2) provides the requirements for benefit payment.

➤ Accuracy of the nine compensated claims:

- The aggregate of all overpayments and underpayments mentioned in the following text results in a net underpayment of \$614.28. Please note that two claimants have unresolved issues that warrant further investigation before the accuracy can be ascertained.
- The accuracy of the indemnity payments sort out as follows:
 - One claimant was underpaid \$26.18 because partial benefits were calculated incorrectly at the time of incapacity. The rate utilized to calculate partial benefits does not appear to be obtained from the Weekly Benefit Table. The insurer has not provided documentation, to this Division, of payment to this claimant of this underpayment.
 - The accuracy of one claimant's indemnity payment is unclear because of this employee being a seasonal worker. The amount of the underpayment is unclear. The WCB-2s from the other employers, if any, have not been filed with the WCB. The AWW and rate can not be determined. In addition, this claimant was not discontinued with a 21-day certificate (WCB-8) timely. The employee returned to work for another employer, date unclear, subsequently the insurer filed a WCB-4 on

12/12/01, attempting to discontinue benefits effective 9/6/01. The WCB-8 was filed on 4/3/03 with the WCB, at the request of this Division, which is 574 days after the effective date on the form. This employee has not been paid (with offset for any earnings) through the date that is 21 days beyond the mail date. This is subject to the provisions of §205(3).

- One claimant was underpaid in the amount of \$26.03 because the wrong rate was used to calculate compensation benefits. It appears that the rate utilized to calculate benefits does not appear to be obtained from the Weekly Benefit Table.
- The accuracy of one claimant's indemnity payment is unclear because of an incomplete WCB-2. The Division requested a correct WCB-2 for this claimant; however, none was provided. The AWW can not be determined until a correct WCB-2 form is filed and reviewed. The insurer had knowledge that the employee was losing time however no attempts were made to pay compensation benefits timely. This is subject to the provisions of §205(3).
- One claimant was overpaid in the amount of \$214.08. The AWW was calculated incorrectly due to typographical error, which incurred the use of a wrong rate.
- The accuracy of one claimant's indemnity payment is unclear. The first two weeks the employee was overpaid because the wrong rate was used. The accuracy for the following two weeks is unclear because the date the employee returned to work at partial duty is unknown.
- One claimant was underpaid approximately \$538.28. The AWW was correct; however, this employee was paid in error at the Massachusetts rate. It appears that the employee has not been paid the difference between Massachusetts' rate and the Maine rate for several weeks. The insurer has not provided documentation, to this Division, of payment to this claimant of this underpayment.
- One claimant was overpaid in the amount of \$75.17. The AWW was calculated incorrectly because the first week's wages, on the WCB-2, were included in the weeks used, in this case they should not have been included. In addition, the insurer did not consider any offsets for wages earned during the employee's period of incapacity.
- One claimant was underpaid approximately \$313.04. The rate used for this claimant was the maximum rate allowed; however, the insurer did not use the current year's rate. Although, "catch up" benefit payments were made to the claimant, they were insufficient to correct the error of the original benefit payment rate. Accrued compensation is due to the claimant. In addition, the partial benefits were calculated incorrectly at the time of partial incapacity. The rate utilized to calculate partial benefits does not appear to be obtained from the Weekly Benefit Table. The insurer has not provided documentation, to this Division, of payment to this claimant of this underpayment.

Title 39-A, M.R.S.A Sections 212 and 213 provide requirements for compensation for total incapacity and partial incapacity.

The Audit Division would like to thank Wausau Insurance Company and its staff for the use of its facilities and providing the audit staff the necessary materials needed to complete the audit in a proficient manner.

¹ “Incident only” Claims incur no medical expenses and less than a day of lost time.

PENALTIES

◆ **Section 205(3), M.R.S.A. Penalties (payable to injured employees)**

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Jan Hubisz VS Jasper Wyman & Sons Date of Injury: 08/23/01 Wausau Insurance #: 204-533078 WCB File #: 01014898	The employee was not given notice of discontinuance until 12/19/01. The employee has not been properly discontinued. Compensation appears to have begun accruing week ending 10/05/01.	\$1,500.00
Donald Little VS The Agency Group Inc. Date of Injury: 05/27/01 Wausau Insurance #: 204-529796 WCB File #: 01020143	The initial indemnity payment was made (7/20/01) 39 days after compensation became due and payable (06/11/01).	\$ 450.00
Stephen Moran VS The Agency Group Inc. Date of Injury: 03/08/01 Wausau Insurance #: 204-530646 WCB File #: 1020102	It appears that the 7-day wait period was met the week of 4/14/01 and the 14-day wait period was met the week of 7/14/01. The initial payment was made on 11/14/01.	\$1,500.00
Kathleen Stanley VS The Agency Group Inc. Date of Injury: 10/05/01 Wausau Insurance #: 204-540813 WCB File #: 01-014708	It appears that initial indemnity payment was made (4/3/03) 530 days after the compensation became due and payable (10/19/01).	\$1,500.00
Total Penalties to Injured Employees		\$4,950.00

PENALTIES (Continued)

◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

➤ Thirty-nine (38) forms were filed late (\$3,800.00).

39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

INDEMNITY BENEFITS

As of 3/24/03

A. Prompt Initial Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-14	Days	Compliant	3	34%
15-28			2	22%
28+			3	33%
Not Paid			1	11%
Total Due			9	100%

B. Prompt Subsequent Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-7	Days	Compliant	94	80%
8-14	Days		16	14 %
15 +	Days		7	6 %
Total Due			117	100%

C. Accuracy of Average Weekly Wage

			2001	
			Number	Percent
Calculated:				
Correct		Compliant	3	34%
Incorrect			5	55%
Unknown			1	11%
Total			9	100%

D. Accuracy of Weekly Benefit Rate

			2001	
			Number	Percent
Calculated:				
Correct		Compliant	0	0 %
Incorrect			8	89%
Unknown			1	11%
Total			9	100%

FORM FILING

As of 03/24/03

A. First Report (WCB-1)

		2001	
		Number	Percent
Filed	Compliant	5	29 %
Filed Late		8	47%
Not Filed		4	24%
Total		17	100%

B. Wage Statement (WCB-2)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	30%
Filed Late		6	60%
Not Filed		1	10%
Total		10	100%

C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	30%
Filed Late		6	60%
Not Filed		1	10%
Total		10	100%

D. Memorandum of Payment (WCB-3)

		2001	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	34%
Filed Late		5	55%
Not Filed		1	11%
Total		9	100%

FORM FILING (Continued)

As of 03/24/03

E. Discontinuance or Modification (WCB-4)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	9	100%
Total			9	100%

F. Discontinuance or Reduction Of Compensation (WCB-8)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	1	50%
Not Filed			1	50%
Total			2	100%

G. Notice of Controversy (WCB-9)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	1	100%
Total			1	100%

H. Statement of Compensation Paid (WCB-11)

			2001	
			Number	Percent
Received at the Board:				
Filed		Compliant	0	0%
Filed Late			6	75%
Not Filed			2	25%
Total			8	100%